

**CITY OF NORTH MIAMI**  
**COMMUNITY DEVELOPMENT BLOCK GRANT**  
**EMERGENCY REPAIR GRANT AGREEMENT**

**THIS AGREEMENT** is entered into this 18 day of **October 2016** by and between the following parties: **JOSEPH J. TOUSSAINT and MIGUETTE TOUSSAINT**, (Owners) of the subject property; the **CITY OF NORTH MIAMI** (City), a Florida municipal corporation, having its principal office at 776 N.E. 125<sup>th</sup> Street, North Miami, Florida 33161; and **BUILDING & REMODELING ,INC.**, (Contractor) having its principal business address at 11100 S.W. 124 Street, Miami, FL 33176 (Parties), regarding rehabilitation of the real property legally described as:

Lot 28, in Block 4, **POINCIANA MANOR SECTION 4** according to the Plat thereof, as recorded in Plat Book 57, at Page 5 of the Public Records of Miami-Dade County, Florida a/k/a 880 NE 147 Street, North Miami, Florida 33161 (subject property)

**WITNESSETH:**

**WHEREAS**, the Federal Department of Housing and Urban Development (HUD) has provided Community Development Block Grants (CDBG) to local governments designed to address housing, economic development, and infrastructure needs of the community that primarily benefit low and moderate income persons; and

**WHEREAS**, the City has determined through its Consolidated Plan for CDBG funds, adopted by the Mayor and City Council in July, 2015, to provide assistance to eligible homeowners within the City for the purpose of rehabilitating their properties (Program), in accordance with CDBG criteria specifically described in Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.); 24 CFR Part 570; and

**WHEREAS**, the Owners have agreed to rehabilitate their property in accordance with Program specifications; and

**WHEREAS**, this Agreement is entered into after compliance by the parties with all applicable provisions of federal, state, and local laws, statutes, rules and regulations.

**NOW, THEREFORE**, in consideration of the mutual promises and the grant money in the amount of **\$4,850.00**, which consideration is acknowledged, the parties agree as follows:

1. CDBG funds in the amount of **\$4,850.00** are being utilized for the purpose of rehabilitating the subject property (Project).
2. The Specifications & Proposal (Contract Documents) related to the Project, attached as Composite Exhibit "A", amended from time to time, represent the scope of services and responsibilities of the parties under the Program, and that the parties agree to abide by and comply with their roles and responsibilities.

3. The City has the sole responsibility and obligation of interpreting the intent and purpose of the Program and Contract Documents.
4. The Project shall be performed in accordance with all applicable codes, ordinances and statutes of the State of Florida, the City and Miami-Dade County.
5. The Owners agree to maintain the property in good condition after the Project is completed. If the property is located in a Federal Emergency Management Act 100-year flood plain zone, the Owners must have an active flood insurance policy.
6. The City, Contractor and Owners acknowledge and agree that funds provided derive from CDBG Program funds appropriated to the City by HUD for the uses and purposes referred to in this Agreement.
7. The Owners acknowledge that they presently occupy the property as their primary residence, and agree to continually occupy the property as their primary residence.
8. The City may seek civil action and penalties including court costs, attorneys' fees and reasonable administrative expenses should Owners fail to comply with the foregoing covenants and restrictions.
9. The City may, periodically, inspect the real property for the purpose of assuring compliance with this Agreement.
10. In the event the Owners or Contractor prevent the City from inspecting the Project for purposes of assuring compliance with this Agreement or with the Contract Documents, or prevents the City from complying with HUD regulations, federal, state or local laws, the City shall be entitled to immediately terminate this Agreement, retain all funds, seek reimbursement for any funds distributed for the Project or obtain other relief as permitted by the Agreement. Further, action by the Owners or Contractor to prevent or deny the City's inspection of the Project will constitute a default of this Agreement, and the City shall be entitled to exercise any and all remedies at law or equity.
11. If the Owners terminate or cancel the services of the Contractor, and the Contractor is not in default of this Agreement, the Contractor shall be compensated for labor and material expenses incurred up to the date of cancellation, plus normal profit and overhead, the total sum of which shall not exceed 20% of the labor and materials' cost. As a condition of payment, Contractor shall submit verifiable written documentation of labor and materials expenses to the City. The Contractor shall be compensated from the funds provided to this Project.
12. Owners shall not release or amend this Agreement without the prior written consent of the City.

13. The Contractor, its subcontractors, agents or employees waive any right to bring a lawsuit against the City or Owners for breach of this Agreement, and shall pursue alternative dispute resolution of all matters arising out of this Agreement.

In conjunction with the above paragraph, the Contractor, its subcontractors, agents or employees waive all rights to file a lien against the subject property.

14. Payment to the Contractor for the Project shall be made as described in Exhibit "B". After payment is made to the Contractor by the City, the City shall be automatically discharged from any and all obligations, liabilities and commitments to Owners, Contractor or any third person or entity.
15. The City desires to enter into this Agreement only if by so doing the City can place a limit on its liability for any cause of action arising out of this Agreement, so that its liability never exceeds its monetary commitment of **\$4,850.00**. Owners and Contractor express their willingness to enter into this Agreement with recovery from the City for any action arising out of this Agreement to be limited to the total amount of its monetary commitment of **\$4,850.00**, less the amount of all funds actually paid by the City pursuant to this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed on the City's liability as set forth in Section 768.28, Florida Statutes.
16. Owners and Contractor shall hold harmless, indemnify and defend the City, its officers and employees from any and all obligations, liabilities, actions, claims, causes of action, suits or demands arising or accruing by virtue of this Agreement.
17. Owners and Contractor shall not assign any interest in this Agreement.
18. In the event of a default, the City will mail to the Owners and the Contractor a notice of default. If the default is not fully and satisfactorily cured in the City's sole discretion within thirty (30) days of the City's mailing of the notice of default, the City may cancel and terminate this Agreement without liability to any other party to this Agreement. In addition, the City shall set the amount of compensation to be paid to the Contractor for the work completed up to the time of termination, including replacement of all work areas to a suitable condition.
19. In the event of a default, the City shall additionally be entitled to bring any and all legal and/or equitable actions in Miami-Dade County, Florida, in order to enforce the City's right and remedies against the defaulting party. The City shall be entitled to recover all costs of such actions including a reasonable attorney's fee, at trial and appellate levels, to the extent allowed by law.
20. A default shall include but not be limited to the following acts or events of an Owners, Contractor, or their agents, servants, employees or subcontractors:

- a. Failure by the Contractor to (i) commence work within thirty (30) days from the date of this Agreement, or (ii) diligently pursue construction and timely complete the project by securing a Final Certificate of Completion within two (2) months from the date of this Agreement, or (iii) provide the documentation required to make the final payment within thirty (30) days from the date when a Final Certificate of Completion is issued.

Work shall be considered to have commenced and be in active progress when, in the opinion of the City a full complement of workmen and equipment are present at the site to diligently incorporate materials and equipment in accordance with the project throughout the day on each full working day, weather permitting.

- b. Failure by the Contractor to comply with any applicable building, fire, life safety, housing or zoning law, rule, regulation or code.
- c. Insolvency or bankruptcy by the Owners or by the Contractor.
- d. Failure by the Contractor to maintain the insurance required by the City.
- e. Failure by the Contractor to correct defects within a reasonable time as decided in the sole discretion of the City.
- f. The breach of any term or condition of this Agreement.

21. If Owners default this Agreement by insolvency or bankruptcy, the following shall apply:

- a. Should this Agreement be entered into and fully executed by the Parties, funds released and the Debtor files for bankruptcy, the following shall occur:

1. In the event the Owners file a voluntary petition under 11 U.S.C. 301 or 302, or an order for relief is entered under 11 U.S.C. 303, the Owners or Contractor shall acknowledge the extent, validity, and priority of the lien recorded in favor of the City. The Owners further agree that in the event of this default, the City shall, at its option, be entitled to seek relief from the automatic stay provisions in effect pursuant to 11 U.S.C. 362. The City shall be entitled to relief from the automatic stay pursuant to 11 U.S.C. 362(d)(1) or (d)(2), and the Owners agree to waive the notice provisions in effect pursuant to 11 U.S.C. 362 and any applicable Local Rules of the United States Bankruptcy Court. The Owners acknowledge that such waiver is done knowingly and voluntarily.

2. Alternatively, in the event the City does not seek stay relief, or if stay relief is denied, the City shall be entitled to monthly adequate protection payments within the meaning of 11 U.S.C. 361.

3. In the event the Owners file for bankruptcy under Chapter 13 of Title 11, United States Code, in addition to the foregoing provisions, the Owners agree to cure any amounts in arrears over a period not to exceed twenty-four (24) months from the date of the confirmation order, and such payments shall be made in addition to the regular monthly payments required by the Note and Mortgage, if applicable. Additionally, the Owners shall agree that the City is over secured and, therefore, entitled to interest and attorney's fees pursuant to 11 U.S.C. 506(b). Such fees shall be allowed and payable as an administrative expense.

b. Should this Agreement be entered into and fully executed by the parties, and the funds have not been forwarded to Owners or Contractor, the following shall occur:


In the event the Owners file a voluntary petition pursuant to 11 U.S.C. 301 or 302, or an order for relief is entered under 11 U.S.C. 303, the Owners acknowledge that the commencement of a bankruptcy proceeding constitutes an event of default under the terms of this Agreement. Further, the Owners acknowledge that this Agreement constitutes an executory contract within the meaning of 11 U.S.C. 365. The Owners acknowledge that the Agreement is not capable of being assumed pursuant to 11 U.S.C. 365(c) (2), unless the City expressly consents in writing to the assumption. In the event the City consents to the assumption, the Owners agree to file a motion to assume the Agreement within ten (10) days after their receipt of written consent from the City, regardless of whether the bankruptcy proceeding is pending under Chapter 7, 11, or 13 of Title 11 of the United States Code. The Owners further acknowledge that this Agreement is not capable of being assigned pursuant to 11 U.S.C. 365(b) (1).

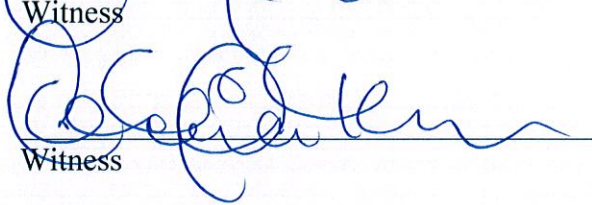
c. Should the Parties wish to execute the Agreement after the Owners have filed for bankruptcy, the following shall occur:


1. The Owners agree that in the event they are current Debtors in bankruptcy, at the request of the City, the Owners shall file a motion for authorization to obtain post-petition financing pursuant to 11 U.S.C. 364(d)(1). The Owners further agree that any funds loaned or granted by the City shall be secured by a lien on the real property first in priority and ahead of any other existing lien(s), unless otherwise agreed to in writing by the City.

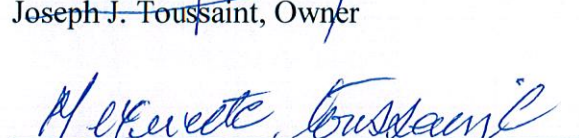



**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed on the date on which the last of the Parties initials or signs.

  
Witness


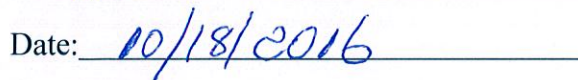
  
Witness

  
Joseph J. Toussaint, Owner

  
Miguette Toussaint, Owner

  
Witness


CONTRACTOR:

By:   
Date: 

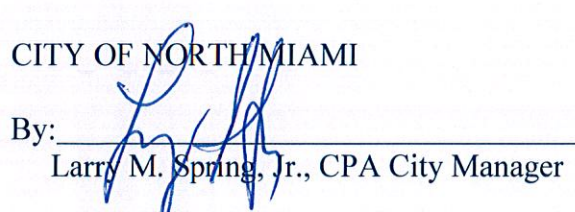
APPROVED:

  
Tanya Wilson-Sejour, A.I.C.P  
Planning Zoning & Development Director


ATTEST:

  
Michael Etienne, Esq, City Clerk

CITY OF NORTH MIAMI

By:   
Larry M. Spring, Jr., CPA City Manager

APPROVED AS TO FORM:

  
Jeff P. H. Cazeau, Esq, City Attorney

## Exhibit A

### SCOPE OF SERVICES

#### **01) EXTERIOR PRESSURE CLEANING \$350.00**

Furnish equipment and labor to pressure clean, (with minimum 3,000 p.s.i.) all exterior siding, masonry/stucco and wood wall and ceiling surfaces, security bars, awnings, railings, pipes, doors, columns, slabs, walkway (including public walkway in front of the house) and any exposed concrete area. Remove alga, mold and mildew. Upon completion, all surfaces must be free of chalking, peeling, flaking, rust, mold and mildew. **NOTE: Contractor is responsible for protecting all flowers, shrubs, hedges, trees and ornamentals on site while pressure cleaning is being performed. Call Housing Inspector for inspection.**

#### **02) PAINT EXTERIOR SURFACE OF HOUSE AND PROVIDE THE MANUFACTURE EXTERIOR WARRANTY \$3,200.00**

##### **• Remove and replace all house vents after house has been painted**

Remove dry, shrunken deteriorated caulk. Cut away old gasket and/or sealants as needed. Remove existing caulk from all windows and doors. Clean all joint surfaces and prepare surfaces to receive new sealants. Install backer rods as necessary prior to caulking. Prime all joints as necessary. Apply and tool ZERO OR LOW VOC sealant to required configurations. Prepare surface, prime and paint. Tint the primer to the color selection. Paint all previous painted surfaces including, eave drip, fascia, soffit, doors (six sides), patio ceiling (screened in or not), concrete slabs and walkways, security/decorative bars, railing and awnings. Use the right product for the surface painted. Apply finish coat(s), test paint to determine proper number of coats for coverage. Protect adjacent areas while painting. Homeowner will select a maximum of three colors. Call Housing Inspector prior to application of finish coat. **NOTE: contractor is responsible for protecting all flowers, shrubs, hedges, trees and ornamentals on site while pressure cleaning is being performed. Additional paint shall left to Homeowner for future use.**

- Replace all loose and missing stucco siding. Repair the stucco siding with the same finish and thickness as the existing. Patch and seal cracks with elastomeric caulking material.
- Excessive bleeding in wood members must be spot primed before application of first coat.
- Do not spray paint; roller and brush application only. All work must be free of runs, sags, defective brushing or rolling.
- Apply the proper mil-thickness of paint for moisture protection and warranty.
- Material allowance for paint must be mid-grade or better of the City approved brands, which are ZERO OR LOW VOC 100% acrylic products, i.e., **Sherwin Williams (Harmony) or an approved equal. Housing Inspector to verify brand and VOC level.**
- **Upon completion of the project, the contractor must provide a manufacture warranty (not the paint label warranty). The manufacture representative must inspect, approve and sign-off on the exterior painting.**

Install approved address numbers; placed in a position to be plainly visible from the street fronting the property. The residential buildings the numbers shall be at least four inches tall and one-half inch wide.

- Paint new soffit to match existing. Apply one coat of LOW VOC primer/sealer and two coats of 100% LOW VOC exterior paint. Material allowance for paint must be mid-grade or better.

#### **3) PLYWOOD (REAR ENCLOSURE) \$ 1,300.00**

- **Provide labor and material to remove existing plywood at rear enclosure and install new plywood**

## **Exhibit B**

### **Program Regulations**

All work shall be performed in accordance with applicable federal regulations, including, but not limited to Davis-Bacon Act, Contract Work Hours and Safety Standards Act and Copeland Act (Anti-Kickback Act).

All work shall be performed in accordance with the terms and conditions stipulated in the Agreement and all applicable plans and specifications. Change Orders to increase or decrease the dollar amount or which alter or deviate from the approved scope of work must be approved in writing by the City of North Miami prior to work being performed or Change Orders being undertaken/implemented. Any change in the scope of work, which increases the costs of the contract, is the Owners' responsibility.

Upon execution of this agreement, the property owner agrees and understands that a sign will be posted in the front of the property for the entire duration of this agreement. **Property owner/Purchaser acknowledges that individuals will be allowed on the property to take photographs.** All projects will be subject to before and after photos and may be included in various local, state and federal reports, which are public records.

### **Commencing Work**

The Project shall begin only after a contract has been executed, a permit pulled, proof that a Notice to Commence has been filed, and submission of a Contractor's Certification, County-required affidavits, proof of required insurances and an up-to-date contractor's license and occupational license.

### **Method of Payment**

Program funds shall be disbursed to the Contractor as follows:

- a. All applications for payment must be accompanied by certified statements (i.e., releases of liens and affidavits from the general contractor, all sub-contractors and suppliers) showing that the property is free and clear of mechanics, materialmen's or any other type of liens or obligations relating to the construction of the project. Also, a copy of both sides of the permit and inspection record card must accompany each payment request. All funding entities must authorize payments.
- b. Program funds shall be paid upon compliance by the contractor with the following:
  1. Environmental Review
    - The National Environmental Policy Act (42 U.S.C. 4321, et seq.);
    - The Council on Environmental Quality Regulations (40 CFR Parts 1500 – 1508);
    - Environmental Review Procedures (24 CFR Part 58);
    - National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.);
    - National Flood Insurance Act of 1968 as amended by the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.)



2. Lead Based Paint
  - Lead Based Paint Poisoning Prevention Act (42 U.S.C. 4801, et seq.);
  - HUD Lead Based Paint Regulations (24 CFR Part 35).
3. Asbestos
  - Asbestos Regulations (40 CFR 61, Subpart M);
  - U.S. Department of Labor Occupational Health and Safety (OSHA) Asbestos Regulations (29 CFR 1910.1001).
4. Labor Standards
  - The Davis-Bacon Act (40 U.S.C. 276a) as amended;
  - The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333);
  - Federal Labor Standards Provisions (29 CFR Part 5.5).

**Additionally, all parties agreed to comply with all existing federal, state and local laws and ordinances hereto applicable, as amended.**